



Health Care Reform **Bulletin**

Pay or Play: Employers can Exclude Some Veterans from ALE Calculation

Provided by JRG Advisors

Quick Facts

- A new law allows employers to exclude certain covered veterans when determining ALE status.
- This provision applies retroactively for months beginning after Dec. 31, 2013.
- Covered veterans must still be counted when determining which employees are full-time, and therefore must be offered affordable, minimum value coverage.

Under a new exclusion, veterans who have certain types of veterans' health coverage will not count for purposes of determining whether an employer employs enough employees to be considered an ALE.

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer health coverage to their full-time employees (and dependents) or pay a penalty. This employer mandate provision is known as the “employer shared responsibility” or “pay or play” rules.

On July 31, 2015, President Obama signed into law the [Surface Transportation and Veterans Health Care Choice Improvement Act of 2015](#), which allows employers to exclude veterans who have coverage under certain veterans' health coverage programs when determining the employer's ALE status. This means that **veterans who have certain types of veterans' health coverage will not count for purposes of determining whether an employer employs enough employees to be considered an ALE.**

This provision is retroactively effective, and applies for months beginning after Dec. 31, 2013.

Overview of ALE Status

Only an ALE may be subject to shared responsibility penalties for failing to offer employer-sponsored health coverage. To qualify as an ALE, an employer must employ, on average, at least 50 full-time employees, including full-time equivalent employees (FTEs),

on business days during the preceding calendar year. All employers that employ at least 50 full-time employees, including FTEs, are subject to the ACA's pay or play rules, including for-profit, nonprofit and government employers.

A full-time employee is an individual who works, on average, **30 or more hours of service each week**. Hours worked by employees with fewer than 30 hours per week must be counted—and then divided by 120 per month—to determine the number of FTEs. The number of FTEs is then added to the actual full-time employee count.

An employer will determine each year, based on its current number of employees, whether it will be considered an ALE for the next year. For example, if an employer has at least 50 full-time employees (including FTEs) for 2014, it will be considered an ALE for 2015.

New Veterans Exclusion

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 adds a new exclusion for purposes of determining ALE status for employers that employ certain veteran workers.

Specifically, when determining whether an employer is an ALE, an individual will not be



taken into account as an employee if he or she has medical coverage under:

- A program for members and certain former members of the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service, including coverage under TRICARE; or
- Health care programs administered by the U.S. Department of Veterans Affairs.

This exclusion allows employers to calculate their ALE status by excluding veteran employees who are covered under these programs.

However, the exclusion only applies for purposes of determining whether an employer qualifies as an ALE. These employees must still be counted when determining which employees are full-time, and therefore must be offered affordable, minimum value coverage.

Impact for Employers

The new veteran exclusion applies retroactively for months beginning after Dec. 31, 2013. Therefore, smaller ALEs that are close to the 50-employee threshold may want to redetermine their ALE status for 2015, if they employ veteran workers. Due to the complex nature of the ACA's pay or play rules, employers may want to consult with legal counsel to determine the implications of any changes in their ALE status for 2015.

An employer's status as an ALE for 2016 will be calculated by looking back at its workforce in 2015. Therefore, when determining their ALE status for 2016, employers should exclude any veterans covered under qualifying veterans' health coverage programs that were employed in 2015.

Employers should also be aware that discrimination issues may arise if any employment decisions are based solely on whether an individual is a veteran or is covered under any veterans' health coverage programs.

